IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 13 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI
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1.   Whether Reporters of Local Papers may be allowed
         to see the judgements?

2.   To be referred to the Reporter or not?

3.   Whether Their Lordships wish to see the fair copy
         of the judgement?

4.   Whether this case involves a substantial question
         of law as to the interpretation of the Constitution
         of India, 1950 of any Order made thereunder?

5.   Whether it is to be circulated to the Civil Judge?

MADATALI PIYARALI HAMID
Versus
NAV NIRMAN KELVANI MANDAL   TRUST

Appearance:
     MR SUREN M SHAH for Petitioners
     MR MB PARIKH for Respondent No. 1
     SERVED for Respondent No. 2, 9
     MR JR NANAVATI for Respondent No. 4
     GOVERNMENT PLEADER for Respondent No. 8

CORAM : MR.JUSTICE S.M.SONI
Date of decision: 20/06/97

ORAL JUDGEMENT

Heard the learned Advocates.

     This appeal is directed against the judgment and

order of the learned Third Extra Assistant Judge, Rajkot below Exh.7 in Bombay Public Trust Act Case no.6/87. By the said application Exh.7, the plaintiffs have prayed for an injunction restraining the defendants nos.1 to 7 from giving resignations as trustees and also preventing them from accepting their resignations and filing change report before the Assistant Charity Commissioner to that effect. This relief foreign to one relief in the plaint and also on merits, the learned Judge has refused the same against which the present appeal is filed. This Court while admitting the appeal has granted the following relief by an order dated 28-1-1988 in the Civil Application no.75/1988 filed in this appeal:

" Rule, returnable on 8-2-88. Mr. J.R. Nanavati waives service of rule on behalf of respondents nos.1,6 and 7. Mr. R.A. Mishra also appears and states that he has the authority to appear for and on behalf of respondent no.1-Trust. The question as to whether both should be permitted to appear on behalf of respondent no.1-Trust or only one Advocate should be allowed to appear shall be decided hereafter.

By way of ad interim relief it is directed that no new trustee shall be appointed without the permission of the trial Court and the property in possession of the trust i.e. Bilka House and Bharat Kutir near Jam Tower shall not be handed over to the landlord without the permission of the trial Court."

Learned Advocate Mr.J.R. Nanavati brought to the notice of the Court that even on the date of the suit defendants nos.3 and 5 have ceased to be the trustees. Relief in the plaint is to remove defendants nos.2 to 5 as trustees of defendant no.1 and for appointment of new trustees. Defendants nos.2 to 7 have also resigned and have ceased to be the trustees when the application Exh.7 came up for hearing. When this appeal came up for hearing, learned Advocate for the appellant has stated that one of the appellants and two of the respondents have died. Thus, when the suit is for removal of trustees and appointment of new trustees and the same trustees have already resigned at the time when this interim relief application came up for hearing no useful purpose will be served by hearing this appeal on merits. If the said trustees- the defendants nos.2 to 7 are in any manner liable for their misdeeds whereby damages are caused to the Trust their liabilities would not cease simply because they have resigned if they are personally liable for the same. But, there is no necessity of preventing them from giving resignation if they want or

even preventing the Trust from appointing new trustees. The Trust is required to run and it appears from the record that new trustees are appointed and Trust must be run accordingly. In view of this fact, by passage of time from 1988 to 1997 new trustees appear to have taken over the management of the Trust and the interim relief will be of no utility. Hence the appeal is dismissed, however, without prejudice to the rights of the appellants to take action against the old trustees if they are liable in any manner whatsoever for the mismanagement of the Trust. The appeal is dismissed. No costs.

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